

00771

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

Peter Iannicelli

Civ. Pers.

FILE: B-186921

DATE: November 29, 1976

MATTER OF: Nicolas J. Panos - Real Estate Expenses -
Loan Origination Fee

DIGEST:

1. Disallowance of reimbursement for loan origination fee incurred by Federal employee incident to sale of residence upon transfer of official duty station is sustained. Loan origination fee is "finance charge" within meaning of that term as defined by section 106(a) of Truth in Lending Act and thus is not reimbursable under Federal Travel Regulations (FPMR 101-7), para. 2-6.2d (May 1973).
2. Certifying officer questions correctness of reimbursement of closing costs made to transferred employee who sold his residence because purchaser usually pays such costs. Since there is doubt, she should consult local office of Department of Housing and Urban Development as to local custom. If it is local custom that seller pays such costs, no action need be taken; however, if purchaser customarily pays such costs, payment should be collected.

This action is in response to a request from Orris C. Huet, an authorized certifying officer of the National Finance Center, United States Department of Agriculture, dated June 24, 1976, regarding the propriety of certifying for payment a reclaim voucher in favor of Mr. Nicolas J. Panos representing real estate expenses incurred in connection with the sale of his residence in Atlanta, Georgia, in May 1975, upon change of his official duty station from Atlanta to Washington, D.C. Mr. Panos had originally submitted a claim for closing costs in the amount of \$990. Later, a breakdown of that amount was obtained, and \$635 was certified as

proper for payment and was paid. The balance of \$355 which was disallowed, the subject matter of the present-reclaim voucher, represents the loan origination fee paid by Mr. Panos in connection the sale of his residence.

Authority to reimburse a Government employee for expenses incurred in connection with the sale of a residence incident to official transfer of station is found in section 5724a(a)(4) of title 5 of the United States Code (1970). The governing regulations pertaining to residence transactions under this statute are contained in chapter 2, part 6 of the Federal Travel Regulations (FPMR 101-7, May 1973).

Federal Travel Regulations (FPMR 101-7) para. 2-6.2d (May 1973) provides in pertinent part that:

"* * * no fee, cost, charge, or expense is reimbursable which is determined to be a part of the finance charge under the Truth in Lending Act, Title I, Public Law 90-321, and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System."

Section 106 of the Truth in Lending Act, Title I, Pub. L. 90-321, 82 Stat. 148, provides the following guidelines for determining whether a particular charge is an excludable expense or part of the finance charge:

"(a) Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit including any of the following types of charges which are applicable:

"(1) Interest, time price differential, and any amount payable under a point, discount, or other system of additional charges.

"(2) Service or carrying charge.

"(3) Loan fee, finder's fee, or similar charge.

"(4) Fee for an investigation or credit report..

"(5) Premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss."

* * * * *

"(e) The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction:

"(1) Fees or premiums for title examination, title insurance, or similar purposes.

"(2) Fees for preparation of a deed, settlement statement, or other documents.

"(3) Escrows for future payments of taxes and insurance.

"(4) Fees for notarizing deeds and other documents.

"(5) Appraisal fees.

"(6) Credit reports."

Regulation Z (12 C.F.R. § 226.4), promulgated by the Board of Governors of the Federal Reserve System pursuant to the Truth in Lending Act, sets forth the foregoing in substantially the same form.

The loan origination fee claimed by Mr. Panos was related to the processing and handling of the mortgage loan secured on the sale of his home and was paid by him as part of the closing cost of the loan. We have held in the past that such a fee may

B-186921

be described as a "loan fee" within the meaning of section 106(a)(3) of the Truth in Lending Act. See 54 Comp. Gen. 827 (1975); B-185621, April 27, 1976; and B-183972, April 16, 1976. There is no exception contained in section 106(e) of the Act for this type of fee. Therefore, it must be considered to be a "finance charge" in accordance with section 106(a) of the Act. Since the Federal Travel Regulations preclude reimbursement for such finance charges, reimbursement of the service charge paid by Mr. Panos is not allowed;

The authorized certifying officer also questions the propriety of the reimbursement of \$635 in closing costs which were previously certified as proper for payment. These relocation expenses included the costs of a credit report, title examination, closing fee, mortgage title insurance premium, recording fees, state tax on the deed, and a survey fee. The certifying officer notes that the sales contract required Mr. Panos to pay closing costs and that this provision was listed under a section entitled "Special Stipulations." The certifying officer concludes that closing costs may not have been customarily paid by the seller in the Atlanta area at the time of the sale, and therefore, reimbursement might not have been proper since the Federal Travel Regulations allow reimbursement only if such expenses are customarily paid by the seller. FTR para. 2-6.2 (May 1973).

We note, that including a provision requiring payment of closing costs by the seller in the sales contract, even where the provision is included in a section entitled "Special Stipulations," does not necessarily mean that the buyer would customarily pay such costs. Therefore, information concerning local custom and practice with respect to charging of closing costs should be obtained from the local office of the Department of Housing and Urban Development in accordance with Federal Travel Regulations (FPMR 101-7) para. 2-6.3c (May 1973). If the items claimed as closing costs, excluding the loan origination fee expense, were customarily paid by the seller in the Atlanta area, there appears to be no objection to their having been paid since they were otherwise allowable under chapter 2, part 6 of the Federal Travel Regulations (FPMR 101-7, May 1973). If such items are not customarily paid by the seller, collection action should be taken to recover the amount paid.

B-186921

For the foregoing reasons, the voucher in the amount of \$355 submitted by Mr. Panos is returned and may not be certified for payment.

Rtk+11
Deputy Comptroller General
of the United States